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August 11, 2000

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Mr. David Waddell
Executive Secretary
Tennessee Regulatory Authority
360 James Robertson Parkway
Nashville, TN 37201

Re: Tariff Filings by all Telephone Companies Regarding Reclassification of
Pay Telephone Service as Required by FCC Order 96-439
Docket No. 97-00409

Dear Mr. Waddell:

Please accept for filing the original and thirteen copies of Tennessee Payphone
Owners Association's reply to BellSouth Telecommunication's response dated August 9, 2000 in
the above-captioned proceeding.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: 
Henry Walker

HW/nl
Enclosure
c: Parties

POSTED
8-11-00

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE: ALL TELEPHONE COMPANIES TARIFF FILINGS REGARDING
RECLASSIFICATION OF PAY TELEPHONE SERVICE AS REQUIRED BY
FCC DOCKET 96-128
Docket No. 97-00409

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EXECUTIVE SECRETARY

REPLY OF TENNESSEE PAYPHONE OWNERS ASSOCIATION

The Tennessee Payphone Owners Association ("TPOA") submits the following reply to the *Response of BellSouth Telecommunications, Inc. to Appeal of Pre-Hearing Officer's Order Denying TPOA's Motion for Interim Relief*, which was filed on August 9, 2000.

1. EUCL and PICC charges.

TPOA agrees with BellSouth that the EUCL and PICC charges which are paid by payphone owners to BellSouth "are collected by LECs to recover a portion of the interstate costs associated with providing local telephone service." BellSouth Response, 3. Therefore, BellSouth presumably also agrees that the EUCL and PICC charges BellSouth receives must be taken into account in order to calculate a "cost-based" rate for a payphone access lines. That is, if the TRA decides that the total (interstate and intrastate) cost of a payphone line is about \$19 a month, as BellSouth's latest cost study would indicate, and establishes a cost-based rate of the same amount, that rate necessarily includes the EUCL and PICC charges which phone owners already pay. If, on the other hand, payphone owners are to be charged \$19 in addition to the EUCL and PICC charges, as BellSouth has argued in other jurisdictions, that would allow BellSouth to recover its interstate costs twice.

BellSouth and TPOA now apparently agree that the EUCL and PICC charges must be taken into account in arriving at a cost-based payphone rate. The parties still disagree, of course, on what that rate should be.

2. The Eighth Circuit's Ruling

The U.S. Court of Appeals for the Eighth Circuit released an order on July 18, 2000, setting aside the FCC's pricing rules for UNEs. *Iowa Utilities Board v. FCC*, Docket No. 96-3321. The Court held that, under the 1996 federal Telecommunications Act, the FCC may not set UNE prices based on an "ideally configured" "hypothetical network" but must base them on the "actual facilities and equipment that will be used" by other carriers. Opinion at 6-8. Nevertheless, the Court also said the FCC was free to adopt a "forward-looking cost methodology" that is based on the "incremental costs that an ILEC actually incurs or will incur in providing the interconnection to its network." *Id.*, at 12. It remains to be seen how the FCC can craft a methodology that is based on "forward looking" costs which are not, at least, to some extent, "hypothetical" costs.

BellSouth does not explain whether or how this decision affects TPOA's Motion for Interim Relief. Most analysts have said the opinion will have only a slight impact on state-approved UNE rates. *See, Telecommunications Reports*, July 24, 2000, pp.3-4, 36-37. BellSouth itself has indicated that the company does not intend to do another cost study in response to the court's opinion but will continue to rely on the same "TELRIC" study that it has been using to calculate UNE rates. In an August 4, 2000 filing with the Florida Public Service Commission, BellSouth stated that the company "is prepared to proceed with [hearings scheduled for next month] to establish rates for ... unbundled network elements and interconnection services

...notwithstanding any uncertainty created by the recent decision” of the Eighth Circuit. (See attached filing by BellSouth in the Florida UNE pricing docket.) Since BellSouth itself is content to continue using its current cost study to determine UNE costs and presumably believes that its methodology has not been invalidated by the court’s decision, TPOA is content to use that same study for the purpose of fixing interim payphone rates. More to the point, it is apparent that whatever adjustments, if any, are made to BellSouth’s cost study as a result of the court’s decision, the results will still demonstrate that the cost of a payphone access line (which is functionally equivalent to a POTS line) is far less than \$40 a month.

3. The Common Carrier Bureau’s March 2 Order.

Finally, BellSouth contends that the TRA should not rely on the March 2, 2000 Order of the FCC’s Common Carrier Bureau because the Order “is applicable only to four LECs in Wisconsin.”

Under Section 276 (c) of the federal Telecommunications Act (47 U.S.C. § 276(c)), the FCC has the authority to preempt any state requirement that is inconsistent with the FCC’s rules on payphone rates. As the Common Carrier Bureau explained in the March 2 Order, the FCC “retains jurisdiction” over state payphone rates in order “to ensure that all requirements of Section 276 and the [FCC’s] Payphone Reclassification Proceeding are met.” March 2, 2000 Order, paragraph 2. Therefore, the pricing guidelines set forth in the March 2 Order, if affirmed by the FCC, will presumably be applied to any other case in which a state commission has either declined to act or has established payphone rates which are inconsistent with those guidelines.¹

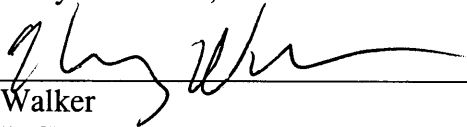
¹ TPOA did not respond to this issue earlier because BellSouth’s argument is patently frivolous--- as the company surely knows. If the Order only applied to four LECs in Wisconsin, BellSouth and the other RBOCs would not have bothered to file a fifty-page appeal
(continued...)

Conclusion

There are about 8,000 private payphones in Tennessee; most are in BellSouth's territory. If a payphone line costs about \$20 a month, BellSouth has collected more than \$6 million in excess rates since April 15, 1997. An interim rate reduction over the next four-to-six months will hardly dent that massive overcharge.

While BellSouth continues to object to granting TPOA any interim relief, the carrier has yet to explain how TPOA's request could harm BellSouth nor cite a single judicial precedent in support of its claim that the TRA, which has set interim rates in other proceedings to implement the federal Telecommunications Act, lacks the authority to fix interim rates in this case. There is ample factual evidence before the agency in the UNE pricing docket (docket 97-01262)² and ample legal support in the orders of the FCC for the TRA to make an interim determination that BellSouth's current payphone rate is substantially in excess of a "cost based" rate and to establish a more reasonable rate, subject to a true up, pending the completion of this docket.

Respectfully submitted,


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¹(...continued)
of the Bureau's Order to the FCC.

² In fixing an interim payphone rate, the agency is entitled to rely on its experience, technical competence, and specialized knowledge gathered from studying BellSouth's costs for the last three years. *See CF Industries v. Tenn. P.S.C.*, 555 S.W. 2d 536 (Tenn. 1980). The agency may also take judicial notice of the extensive record in the UNE pricing docket.

CERTIFICATE OF SERVICE

I hereby certify that on August 11, 2000 a copy of the foregoing document was served on the parties of record, via U.S. Mail, addressed as follows:

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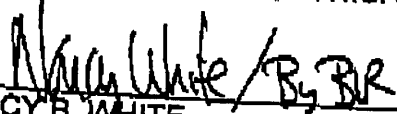
ATTACHMENT

accommodating Verizon's and Sprint's desire for a continuance. However, to the extent the Commission is not inclined to bifurcate the proceedings and instead wants to have a single proceeding to establish rates for BellSouth, Verizon, and Sprint at the same time, then BellSouth has no choice but to oppose any request for a continuance.

Second, BellSouth is concerned about Sprint's apparent desire to bifurcate the proceedings, but at the same time participate in the BellSouth proceeding in order to challenge BellSouth's cost studies. This is particularly true since Sprint's challenge is based, at least in part, upon Sprint's own cost studies – the same cost studies which it now claims it is "unable to adequately defend...." Sprint's Motion ¶ 5. If Sprint cannot defend its cost studies so as to proceed with hearings to establish rates for Sprint, it should not be permitted to rely upon those same cost studies in its rebuttal testimony filed against BellSouth. Although Sprint indicates that it intends to withdraw certain testimony "after consultation with Staff and the parties....," the Commission should make clear that any testimony referring to Sprint's cost studies will be stricken in the event that Sprint's motion for a continuance is granted.


Respectfully submitted this 4th day of August, 2000.

BELLSOUTH TELECOMMUNICATIONS, INC.



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